## UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

UNITED STATES OF AMERICA,	)
Plaintiff,	) Civil Action No. 00-C-0635
v. JAMES A. BLAZINA,	) ) Judge Norgle ) Magistrate Judge Ashman
Defendant	)

### NOTICE OF MOTION

Please take notice that on June 9, 2000 at 9:30 a.m. or soon thereafter as counsel may be heard, the United States of America, by its undersigned counsel, shall appear before the Honorable Judge Norgle, U.S. District Court Judge, 219 South Dearborn Street, Courtroom 2341, Chicago, Illinois and present a Motion to Extend Time to Serve Complaint and Serve By Court Order.

STEPHEN J. TURANCHIK

Trial Attorney, Tax Division U.S. Department of Justice Post Office Box 55
Ben Franklin Station
Washington, D.C. 20044

Telephone: (202) 307-6565

Government Exhibit

B2

#### CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing Notice of Motion and Motion to Extend Time to Serve Complaint and Serve By Court Order has been made upon the following by depositing a copy in the United States mail, postage prepaid, this <a href="#">5K</a> day of <a href="#">June</a>, 2000:

James A. Blazina
Post Office Box 805663
Chicago, IL 60680

STEPHEN J. TURANCHIK

Trial Attorney, Tax Division U.S. Department of Justice Post Office Box 55
Ben Franklin Station
Washington, D.C. 20044

Telephone: (202) 307-6565

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

UNITED STATES OF AMERICA,	) )
Plaintiff,	)
v.	) CASE NO. 00-C-0635
JAMES A. BLAZINA,	, ) JUDGE NORGLE ) MAGISTRATE JUDGE ASHMAN
Defendant.	) )

MEMORANDUM OF LAW IN SUPPORT OF UNITED STATES' MOTION TO EXTEND TIME TO SERVE COMPLAINT AND SERVE BY COURT ORDER

The United States of America, by its undersigned counsel, hereby moves this Court for an order extending the time for service of the Complaint upon James A. Blazina, and for an Order allowing Service upon the mailing of the Summons and Complaint to (1) Post Office Box 805663, Chicago, Illinois 60680, an active Post Office Box maintained by the defendant, James A. Blazina, (2) the address associated with that Post Office Box: 1515 East Central Road, Arlington Heights, Illinois 60005, (3) Post Office Box 10449, Chicago, Illinois 60610, the address listed with the Illinois Bar Disciplinary Committee and (4) 1373 Foxdale Drive, Addison, Illinois, the street address associated with Post Office Box 10449.

As more fully set forth below, the grounds for this motion are that the United States was unable to obtain, in

spite of its good faith efforts, a viable address for the defendant James A. Blazina within the 120 day period set forth in Fed.R.Civ.P. 4(m).

#### ARGUMENT

### I. Factual Backround

On February 1, 2000, the United States brought this civil action against the defendant to reduce to judgment certain unpaid federal tax assessments against James A. Blazina. United States attempted to serve the defendant at his last known address at 5328 West Byron Street, Chicago, Illinois. The defendant moved and left no (See Exhibit A & B). forwarding address. (See Exhibit B: Affidavit of Process Server). In the course of attempting to locate the defendant, it was learned that the defendant maintained a Post Office Box at the 60680 Post Office from which mail is regularly picked-The United States requested and received from the United States Postal Service the street address associated with the Post Office Box maintained by James A. Blazina: 1515 East Central Road, Arlington Heights, Illinois. (See Exhibit C). The United States attempted to serve the defendant at the Arlington Heights address, however, the defendant was unknown at that address. (See Exhibit D: Affidavit of Process Server).

The United States has attempted to locate the defendant's

address through a number of other sources as well. The defendant is a registered licensed attorney in the State of Illinois, however, at his most recent court hearing, the defendant failed to appear. (See Exhibit E). The defendant, is registered with the Illinois Bar Disciplinary Committee, however, the address utilized by the defendant with the Disciplinary Committee is listed as Post Office Box 10449, Chicago, Illinois 60610. (See Exhibit E). The street address associated with this Post Office Box is 1373 Foxdale Drive, Addison, Illinois.

Additionally, the defendant is not listed as a telephone customer, an electricity power customer, and is not listed in the Chicago area telephone directories. (See Exhibit E).

Accordingly, under the circumstances, the United States contends that its good faith, albeit unsuccessful, attempts to serve James A. Blazina constitutes "good cause" as to why service was not made within the period set forth in Federal Rule of Civil Procedure 4(m).

Therefore, the United States requests that its motion to extend time to serve the Complaint be granted so that the United States be allowed an additional sixty (60) days beyond the original due date of May 31, 2000, so that service may be made upon James A. Blazina. Additionally, the United States requests that the Court order Service upon the defendant by

mailing the Summons and Complaint to the defendant's current Post Office Boxes and address associated with the Post Office Box at the 60608 zip code Post Office. Further, we request that Service be by regular mail as James A. Blazina refuses to sign for registered or certified mail sent to his Post Office Box.

### II. <u>The Time for Service of the Complaint Should Be Extended</u> <u>For Good Cause</u>

Federal Rule of Civil Procedure 4(m) provides as follows:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant, or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. This subdivision does not apply to service in a foreign country pursuant to subdivision (f) or (j)(1).

"Rule 4(j) [now 4(m)] allows whatever time beyond 120 days 'good cause' requires." Sellers v. United States, 902 F.2d 598, 603 (7th Cir. 1990). Good cause necessitates a demonstration of why service was not made within the time constraints of Rule 4(j) [4(m)]. Moncrief v. Stone, 961 F.2d 595 (6th Cir. 1992).

Here, the United States attempted to serve the defendant at his last know street address after checking the Internal

Revenue Service's records and a search of electronic databases. Additionally, the United States attempted to serve the defendant, an attorney, at a court appearance, however, the defendant failed to appear and the case was dismissed. Furthermore, the United States has attempted to serve the defendant at the street address provided with the defendant's active Post Office Box.

Additionally, the United States has searched for records of other addresses for the defendant, however, he is not listed in the Chicago telephone directory, he is not a telephone customer and he is not an electricity power customer.

In short, due to the difficulty in serving James A.

Blazina, an extension of time is both necessary and consistent with the interests of justice.

### III. Service Should Be Effected By Court Order

Federal Rule of Civil Procedure 4(e) provides:

Unless otherwise provided by federal law, upon an individual from whom a waiver has not been obtained and filed . . . may be effected in any judicial district of the United States pursuant to the law of the state in which the district court is located . . . for the service of the summons upon the defendant in an action brought in the courts of general jurisdiction of the State.

Illinois state law Chapter 735, 5/2-203.1 provides:

[i]f service upon an individual defendant is impractical under items (1) and (2) of subsection (a) of Section 2-

203, the plaintiff may move, without notice, that the court enter an order directing a comparable method of service."

Section 2-203(a) provides:

service of summons upon an individual defendant shall be made (1) by leaving a copy of the summons with the defendant personally, (2) by leaving a copy at the defendant's usual place of abode, with some person of the family or a person residing there, of the age of 13 years or upwards, and informing that person of the contents of the summons, provided the officer or other person making the service shall also send a copy of the summons in a sealed envelope with postage fully prepaid, addressed to the defendant at his or her usual place of abode.

In the instant case, the provisions of 5/2-203.1 are satisfied because locating the defendant or his place of abode have been impractical. The defendant maintains Post Office Boxes, however, the addresses associated with those Post Office Boxes are neither his residence nor his business address. The defendant has not appeared in court, despite a hearing where he was the attorney of record. The defendant is neither a telephone customer nor an electric power customer.

Since the defendant is a licensed attorney in the State of Illinois, the United States should be able to serve the defendant in accordance with the Illinois Supreme Court Rules.

Rule 765(a) of the Illinois Supreme Court Rules provides:

Service of any notice, complaint, petition, subpoena, pleading or document in proceedings under these rules may be made in any manner authorized by the Code of Civil Procedure or rules of this court or by delivery of any such notice, complaint, petition, subpoena, pleading or document to the

address listed on the master roll for the attorney.

The defendant has listed Post Office Box 10449, Chicago,
Illinois 60610 as the his registration address. (See Exhibit
E). The Committee Comments to the above section note, "the
revised rule allows for service to be perfected by delivery of
an item to a registration address, resources presently
committed to serving recalcitrant attorneys could be devoted
to conducting investigations and reducing unnecessary delay in
processing charges."

Consequently, the United States moves this court to order service of process be effected upon the mailing of the Summons and Complaint to (1) Post Office Box 805663, Chicago, Illinois 60680, an active Post Office Box maintained by the defendant, James A. Blazina, (2) the address associated with that Post Office Box: 1515 East Central Road, Arlington Heights, Illinois 60005, (3) Post Office Box 10449, Chicago, Illinois 60610, the address listed with the Illinois Bar Disciplinary Committee and (4) 1373 Foxdale Drive, Addison, Illinois, the street address associated with Post Office Box 10449. Service upon the defendant's Post Office Box is anticipated to give the defendant actual notice because the box is, in fact, active.

### CONCLUSION

For the foregoing reasons, the United States requests that its motion be granted.

Respectfully submitted,

SCOTT R. LASSAR United States Attorney

STEPHEN J. TURANCHIK

Trial Attorney, Tax Division U.S. Department of Justice

Post Office Box 55
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 307-6565

### CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing

Memorandum of Law in Support of United States' Motion to Extend

Time to Serve Complaint and Serve By Court Order has been made

upon the following by depositing a copy in the United States

mail, postage prepaid, this 51 day of June, 2000:

James A. Blazina P.O. Box 805663 Chicago, IL 60680

STEPHEN J. TURANCHIK

Trial Attorney, Tax Division U.S. Department of Justice Post Office Box 55
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 307-6565

## UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

UNITED STATES OF AMERICA,	)
Plaintiff,	) Civil Action No. 00-C-0635
v. JAMES A. BLAZINA,	) ) Judge Norgle ) Magistrate Judge Ashman
Defendant.	)

### DECLARATION OF ATTORNEY TURANCHIK

- I, Stephen J. Turanchik, pursuant to the provisions of 28 U.S.C. §1746 certify that:
- 1. I am the Trial Attorney for the Tax Division of the United States Department of Justice, Washington, D.C., to whom primary responsibility for this case has been assigned.
- 2. I conducted a search on electronic databases of
  Lexis-Nexis and Westlaw that revealed the defendant's current
  address as: Post Office Box 805663, Chicago, Illinois 60680.
  This address was last updated in the electronic database as of
  January 1, 2000. The prior address for the defendant is
  listed as 5328 West Byron Street, Chicago, Illinois 60641.



- 3. Through discussions with employees at the United States Postal Service, I learned that Post Office Box 805663, Chicago, Illinois 60680, in the name of James A. Blazina is in active use.
- 4. The United States has attempted unsuccessfully to serve the defendant at the following addresses:

1660 North LaSalle Drive, Apt. 709 Chicago, Illinois 60614 (address indicated on driver's license)

5328 West Byron Street Chicago, Illinois (street address indicated on electronic database search)

1515 East Central Road Arlington Heights, Illinois 60005 (address associated with active Post Office Box)

5. The address of James A. Blazina maintained with the Illinois Bar Disciplinary Committee is Post Office Box 10449, Chicago, Illinois 60610.

I certify under penalty of perjury that the foregoing is true and correct.

Executed at Washington, D.C., this 5th day of June 2000.

STEPHEN J. TURANCHIK

Trial Attorney, Tax Division

U.S. Department of Justice

### Case: 1:00-cv-00635 Addida vit 201 Process 1 Septembre 20 PageID #:106

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٧Ş ANTERCA 151 AZWA DEFENDANT/RESPONDENT Being duly sworn, on my oath, I., declare that I am a citizen of the United States, over the age of eighteen and not a party to this action. Z=>4×12 Service: I served RUISSA 173 NAME OF PERSON/ENTITY BEING SERVED witness fee and mileage by serving (NAME) at □ Home Business On (DATE) at (TIME) Thereafter copies of the documents were mailed by prepaid, first class mail on (DATE). from (CITY) \_ (STATE) Manner of Service: By Personal Service. ☐ By leaving, during office hours, copies at the office of the person/entity being served, leaving same with the person apparently in charge thereof, namely. By leaving a copy at the defendant's usual place of abode, with some person of the family or a person residing there, of the age of 13 years or upwards, and informing that person of the general nature of the papers. ☐ By posting copies in a conspicuous manner to the address of the person/entity being served. Non-Service: After due search, careful inquiry and diligent attempts at the address(es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s): **EKUnknown at Address** □ Evading ☐ Other:. ☐ Address Does Not Exist ☐ Service Cancelled by Litigant 2 Moved, Left no Forwarding ☐ Unable to Serve in a Timely Fashion Service Attempts: Service was attempted on: ( DATE DATE TIME DATE TIME Description: Male ☐ White Hair □ White Skin ☐ Black Hair ☐ 14-20 Yrs. Under 5' Under 100 Lbs. ☐ Female Black Skin D Brown Hair 21-35 Yrs. D 5'0"-5'3" Balding ☐ 100-130 Lbs. Yellow Skin ■ Blond Hair 38-50 Yrs. □ 5'&",5'8" ☐ 131-160 L.bs. ☐ Brown Skin ☐ Gray Hair Mustache 51-65 Yrs. 5'9"-6'0" ☐ 161-200 Lbs. ☐ Glasses Red Skin ☐ Red Hair ☐ Beard Over 65 Yrs. Over 6' Over 200 Lbs. OTHER IDENTIFYING FEATURES: State of Illinois County of Cook Subscribed and sworn to before me LASALLE PROCESS SERVERS a notary public, this

OFFICIAL SEAL ANDREW RAPHAEL NOTARY PUBLIC, STATE OF ILLINOIS MY COMMISSION EXPIRES 11-17-2003

EXHIBIT D

GOVERNMENT

## UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

UNITED STATES OF AMERICA,	)
Plaintiff,	) Civil Action No. 00-C-0635
v. JAMES A. BLAZINA,	) ) Judge Norgle ) Magistrate Judge Ashman
Defendant.	) )

### DECLARATION OF DONALD NORTON

- I, Donald Norton, pursuant to the provisions of 28 U.S.C. \$1746 certify that:
- 1. I am employed with the Office of the United States
  Attorney for the Northern District of Illinois, and my
  official title is Investigator.
- 2. At the request of trial attorney Stephen J. Turanchik,
  I was asked to serve James A. Blazina with a summons and
  complaint in the above-captioned action.
- 3. Upon information and belief, James A. Blazina, is a registered licensed attorney in the State of Illinois.
- 4. James A. Blazina is registered with the Illinois Bar Disciplinary Committee and has listed a Post Office Box 10449, Chicago, Illinois as his address with the Disciplinary



Committee. The street address associated with this Post Office Box is 1373 Foxdale Drive, Addison, Illinois.

- 5. In his most recent case, James A. Blazina did not appear in court, and the case was dismissed.
- 6. James A. Blazina is not listed as a telephone customer, an electicity power customer, and is not listed in the Chicago area telephone books or telephone information.
- 7. James A. Blazina, maintains a Post Office Box for the receipt of his mail. However, I was informed by a Postal Service employee that he refuses to sign for registered or certified mail.

I certify under penalty of perjury that the foregoing is true and correct.

Executed at Chicago, IL, this

day of

day of June, 2000.

DONALD NORTON

Investigator

Office of U.S. Attorney Northern District of

Illinois

### UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

UNITED STATES OF AMERICA,	)
Plaintiff,	)
	)
<b>V</b> .	) CASE NO. 00-C-0635
	)
JAMES A. BLAZINA,	) JUDGE NORGLE
	) MAGISTRATE JUDGE ASHMAI
Defendant.	)
	)

#### PROPOSED ORDER

Upon motion by the United States pursuant to Federal Rule of Civil Procedure 4(e), the United States is granted an additional sixty (60) days to serve the defendant James A.

Blazina.

Upon motion by the United States pursuant to Federal Rule of Civil Procedure 4(m) and Illinois state law Chapter 735, 5/2-203.1, this Court orders that service of process be effective upon regular mailing of the Summons and Complaint to the defendant's addresses:

- (1) Post Office Box 805663, Chicago, Illinois 60680, an active Post Office Box maintained by the defendant, James A. Blazina,
- (2) 1515 East Central Road, Arlington Heights, Illinois 60005 the address associated with Post Office Box 805663, Chicago, Illinois 60680,

(3) Post Office Box 10449, Chicago, Illinois 60610, the	
defendant's address listed with the Illinois Bar Disciplinary	
Committee, and	
(4) 1373 Foxdale Drive, Addison, Illinois, the street	
address associated with Post Office Box 10449.	
IT IS SO ORDERED, this day of, 2000.	
UNITED STATES DISTRICT COURT JUDGE	